

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of New Bedford, Massachusetts

Respondent

Docket No. TSCA-1-2004-0052

AMENDED CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I ("EPA"), and Respondent, the City of New Bedford, Massachusetts (the "City" or "Respondent") entered into a Consent Agreement and Order that became effective on May 21, 2004 (the "original Order"), and which resolved Respondent's liability for certain violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 *et seq.*, and the Act's implementing regulations, "Polychlorinated Biphenyls ("PCBs") Manufacturing, Processing, Distribution in Commerce and Use Prohibitions," 40 C.F.R. Part 761.

Paragraph 18 of the original Order addressed areas of Respondent's property from which Respondent agreed to remove and properly dispose of PCB-impacted waste. Paragraph 20 of the original Order specified the date by which the activities set forth in paragraph 18 would be completed by Respondent.

Subsequent to execution of the original Order, EPA and Respondent realized that areas in addition to those set forth in paragraph 18 of the original Order would need to have PCB-impacted waste removed from them, and that the original September 30, 2004 completion date for the PCB-impacted waste removal could not be met, through no fault of Respondent.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

Accordingly, EPA and Respondent have agreed to amend the original Order to include additional areas from which PCB-impacted waste will be removed and properly disposed of by Respondent. In addition, EPA and Respondent have also agreed to set a new date for completion of the PCB-impacted waste removal.

Therefore, upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

The terms of the original Order and its attachments remain effective and are incorporated herein by reference with the exception of paragraphs 18, 20, 22 and 28, which are hereby amended as follows:

PCB-IMPACTED WASTE REMOVAL

18. Respondent shall conduct sampling and shall perform a removal of PCB contamination located at the Site, and in those areas in proximity to the Site where PCBs may have migrated or been disposed of as a result of the activities referenced in paragraphs 7 and 8 of this CAFO, in accordance with the May 14, 2004 Work Plan, as amended over time and approved by EPA (the "Work Plan"). For any areas in proximity to the Site from which Respondent removes PCBs, Respondent certifies that it has obtained lawful and effective access agreements from the owner(s) of such property. The Work Plan is included as Attachment 1 to the original Order. By entering into this CAFO, EPA is not certifying that the transporters or disposal facilities referenced in the Work Plan are legally authorized to conduct the activities set forth in the Work Plan. It shall be Respondent's responsibility to make such determinations.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

20. Respondent shall complete all PCB activities described in the Work Plan as amended over time and approved by EPA, by the dates specified in the Work Plan.

CLEANUP OF REMAINDER OF THE SITE

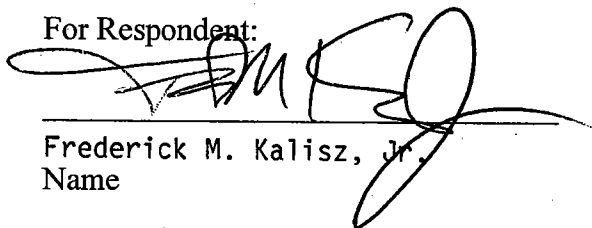
22. EPA and Respondent agree that the requirements for cleanup of any PCB contamination in areas other than those referenced in paragraph 18 of this CAFO and contained in the Work Plan, as amended over time and approved by EPA, are not being addressed in this CAFO. EPA expressly reserves all its rights to ensure in the future that Respondent undertakes all appropriate cleanup measures to address PCB contamination at the Site, in areas other than those referenced in paragraph 18 of this CAFO and contained in the Work Plan, as amended over time and approved by EPA, in accordance with 40 CFR 761.61. Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address at the Site pollutants or contaminants of any kind other than PCBs.

28. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA for the violations alleged in this CAFO only as to the PCB-contaminated soils in the areas referenced in paragraph 18 of this CAFO and contained in the Work Plan, as amended over time and approved by EPA. EPA expressly reserves all its rights to address violations of Section 16(a) of TSCA relating to PCB-contaminated areas of the site other than the areas identified in the Work Plan, as amended over time and approved by EPA.

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

Moreover, nothing in this CAFO shall be construed to limit in any way EPA's or the Massachusetts Department of Environmental Protection's authority to address pollutants or contaminants of any kind other than PCBs that may exist at the Site. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

For Respondent:



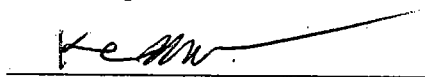
Frederick M. Kalisz, Jr.
Name

Mayor

Title

10-13-04
Date

For Complainant:




Ken Moraff
Manager, Enforcement Office
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1


10/21/04
Date

In the Matter of City of New Bedford, Massachusetts; Docket No. TSCA-1-2004-0052

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective immediately.


Jill T. Metcalf
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1


Date

BEFORE THE ADMINISTRATOR

DOCKET NO.
TSCA 1-2004-0052

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amended Consent Agreement and Final Order has been sent to the following persons on October 26, 2004, in the following manner:

Original and One Copy,
Hand Delivered:

Regional Hearing Clerk (RCH)
U.S. EPA, Region 1
One Congress Street
Suite 1100
Boston, MA 02114-2023

Copy by Certified Mail, Return
Receipt Requested:

Jane Medeiros Friedman, Esq.
Associate Solicitor – City of New Bedford
133 William Street
New Bedford, Massachusetts 02740

Gregory Dain

Date _____